

RETIREMENT BENEFITS FOR CERTAIN EMPLOYEES OF THE BUREAU OF INDIAN AFFAIRS AND THE INDIAN HEALTH SERVICE

SEPTEMBER 1, 1976.—Ordered to be printed

Mr. HENDERSON, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 5465]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5465) to allow Federal employment preference to certain employees of the Bureau of Indian Affairs, and to certain employees of the Indian Health Service, who are not entitled to the benefits of, or who have been adversely affected by the application of, certain Federal laws allowing employment preference to Indians, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That section 8336 of title 5, United States Code, is amended by redesignating subsections (g) and (h) as subsections (h) and (i), respectively, and inserting immediately after subsection (f) the following new subsection:

“(g) An employee is entitled to an annuity if he—

“(1) is separated from the service before December 31, 1985, after completing 25 years of service or after becoming 50 years of age and completing 20 years of service,

“(2) was employed in the Bureau of Indian Affairs or the Indian Health Service continuously from June 17, 1974, to the date of his separation,

“(3) is not entitled to an annuity under subsection (a), (b), (c), or (e) of this section or under section 8337 of this title,

“(4) is not entitled to a preference under section 12 of the Act of June 18, 1934 (48 Stat. 986) or any other provision of law

granting a preference to Indians in promotions or other personnel actions, and

"(5) demonstrates to the satisfaction of the Commission that he has been passed over on at least two occasions for promotion, transfer, or reassignment to a position representing career advancement because of section 12 of the Act of June 18, 1934 (48 Stat. 986) or any other provision of law granting a preference to Indians in promotions or other personnel actions."

SEC. 2. (a) Section 8339(d) of title 5, United States Code, is amended by striking out "8336(c)" and inserting in lieu thereof "8336(c) or (g)".

(b) Section 8339(h) of title 5, United States Code, is amended by striking out "section 8336(g)" and inserting in lieu thereof "8336(h)".

SEC. 3. The amendments made by this Act shall take effect on October 1, 1976, or on the date of the enactment of this Act, whichever date is later, and shall only apply with respect to employees separated from the service after June 17, 1974.

And the Senate agree to the same.

That the House recede from its disagreement to the amendment of the Senate to the title of the House bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the amendment of the Senate to the title of the House bill, insert the following:

An Act to provide additional retirement benefits for certain employees of the Bureau of Indian Affairs and the Indian Health Service who are not entitled to Indian preference, to provide greater opportunity for advancement and employment of Indians, and for other purposes.

And the Senate agree to the same.

DAVID N. HENDERSON,
MO UDALL,
DOMINICK V. DANIELS,
RICHARD C. WHITE,
WILLIAM D. FORD,

Managers on the Part of the House.

GALE W. MCGEE,
QUENTIN N. BURDICK,
TED STEVENS,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5465) to allow Federal employment preference to certain employees of the Bureau of Indian Affairs, and to certain employees of the Indian Health Service, who are not entitled to the benefits of, or who have been adversely affected by the application of, certain Federal laws allowing employment preference to Indians, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the bill struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

APPOINTMENT PREFERENCE

House bill

The House bill provides assistance to employees of the Bureau of Indian Affairs of the Department of the Interior and employees of the Indian Health Service of the Department of Health, Education, and Welfare, whose career opportunities have been adversely affected by Indian preference laws by requiring that they be given priority consideration for appointment to vacant positions within their Department. If an employee eligible for such assistance is considered and passed over twice for such a vacancy, he would be entitled to be appointed to the next vacancy for which he applies, unless the appointing authority determines that compelling reasons exist for again passing over the employee. In such a case, the appointing authority would have to file with the Civil Service Commission written reasons supporting the action under procedures comparable to the procedures applicable in cases where individuals who have veterans preference are passed over.

Senate amendment

The Senate amendment does not contain any provision providing appointment preference for individuals who are adversely affected by Indian preference laws.

Conference substitute

The conference substitute does not provide for appointment assistance for individuals adversely affected by Indian preference laws.

RETIREMENT BENEFITS

House bill

Section 4 of the House bill authorizes an employee who availed himself of appointment assistance provided by the bill and who was considered and passed over 3 times to apply for retirement and an annuity under section 8336(d) of title 5, United States Code, if he has completed 25 years of service or has attained 50 years of age and completed 20 years of service.

Senate amendment

The Senate amendment authorizes payment of an immediate annuity to employees not entitled to the benefits of Indian preference laws who retire before December 31, 1985, and at the time of retirement—

- (1) have completed 20 years of service and are at least 50 years of age or have completed 25 years of service regardless of age;
- (2) have been continuously employed in the Bureau of Indian Affairs or the Indian Health Service since June 17, 1974;
- (3) have been twice passed over for promotion or transfer because of the Indian preference laws; and
- (4) are not otherwise entitled to full retirement benefits.

An employee who meets the above requirements is entitled to an annuity computed at—

- (1) 2½ percent of his average pay for the first 20 years of service, plus
- (2) 2 percent of his average pay for all service in excess of 20 years.

No provision is made for reducing the annuity of an employee if such employee is under age 55 at the time of retirement.

Conference substitute

The conference substitute is essentially the same as the Senate amendment.

EFFECTIVE DATE

House bill

The House bill would take effect on October 1, 1976, or, if later, on the date of the enactment of the bill.

Senate amendment

The effective date in the Senate amendment is essentially the same as the provisions of the House bill, except that the amendments made by the Senate amendment would also apply to any eligible employee who separated after June 17, 1974 (the date of *Morton v. Mancari*, 417 U.S. 535) and before the effective date in the House bill. The annuity of any such employee is to be determined as if such amendments were in effect on the date on which he separated. However, no amount of annuity accruing by reason of such amendments would be

payable for any period before October 1, 1976 (or the date of enactment, if later than such date).

Conference substitute

The conference substitute is essentially the same as the Senate amendment.

DAVID N. HENDERSON,
MO UDALL,
DOMINICK V. DANIELS,
RICHARD C. WHITE,
WILLIAM D. FORD,

Managers on the Part of the House.

GALE W. MCGEE,
QUENTIN N. BURDICK,
TED STEVENS,

Managers on the Part of the Senate.



1. The first of the above mentioned persons, 1810, on the day of birth, was named David.

2. The second of the above mentioned persons, 1810, on the day of birth, was named John.

3. The third of the above mentioned persons, 1810, on the day of birth, was named William.

4. The fourth of the above mentioned persons, 1810, on the day of birth, was named James.

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10. The tenth of the above mentioned persons, 1810, on the day of birth, was named John.



